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Sent via e-mail, hand delivery and/or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: DPU 97-88/97-18 (Phase II), Verizon's July 22, 2004 PAL Compliance Filing

Dear Ms. Cottrell:

The Attorney General submits these comments to the Massachusetts Department of Telecommunications and Energy ("Department" or "DTE") in response to the July 22, 2004 Public Access Line ("PAL" or "payphone") Compliance Filing ("Filing") submitted by Verizon New England, Inc., d/b/a Verizon Massachusetts ("Verizon" or "Company"). The Department should investigate Verizon's Filing to determine whether it should allow the Company to recover \$4.3 million in anticipated lost PAL revenues as an exogenous cost adjustment under the Verizon Alternative Regulation Plan ("Alt. Reg. Plan").¹ In addition, the Department should investigate the reasonableness of allowing Verizon to recover its lost PAL revenues from fewer than half of its residential dial tone customers, effectively doubling the rate impact on those customers. Finally, the Department can bifurcate its investigation of the Filing to consider the exogenous adjustment recovery aspect on a separate track not subject to the October 6, 2004 compliance implementation date.

Background

On June 6, 2003, the Department approved the Company's June 2, 2003 Alt. Reg. Plan in which the Department retained regulatory oversight over certain retail residential services ("price-regulated services") but released price controls on other retail residential and business services ("market-priced services"). The Alt. Reg. Plan includes a provision that allows Verizon to increase or decrease its price-regulated services to reflect an exogenous event that "increases or decreases the Company's cost of providing, or increases or decreases its revenues from, those

¹ *Verizon's Alternative Regulation Plan*, D.T.E. 01-31 (Phase II), Verizon Revised Compliance Filing (June 2, 2003) ("Alt. Reg. Plan").

price-regulated services.” Alt. Reg. Plan, Section N. An “exogenous event” is an event that is:

[B]eyond the control of Verizon MA and that positively or negatively changes the Company’s cost of providing service, or its revenues from those services. An exogenous event includes, but is not limited to: (i) changes in tax laws; (ii) changes in Generally Accepted Accounting Principles that apply specifically to telecommunications or changes in the Federal Communications Commission Uniform Systems of Accounts; (iii) any Federal Communications Commission rules changes pertaining to jurisdictional separations; and (iv) regulatory, judicial, or legislative changes affecting the telecommunications industry, including rules and orders that are necessary to implement such changes.

Alt. Reg. Plan, Section N, pp. 3-4.

The Department set forth in the Alt. Reg. Plan the procedure Verizon must use to seek cost recovery, or rate reduction, due to an exogenous event:

A party may petition the Department to recover positive or negative changes in costs or revenues because of an exogenous event in accordance with the provisions of the Plan. . . . If the Department finds that Verizon MA has experienced a positive or negative change in costs or revenues due to an exogenous event, it shall allow the Company to reflect the amount of the change by way of surcharge, credit or rate adjustment as appropriate. If a dispute arises over whether an event is exogenous, the burden of proof lies with the party proposing the recovery or reduction. Any proposed exogenous adjustment must affect the Company’s annual costs or revenues by at least \$3 million.

Alt. Reg. Plan, Section N, p. 4.

Verizon contends in its Filing that changes to PAL pricing to reflect federal unbundled network element pricing methods will create a revenue shortfall of \$4,357,781. Verizon also contends that the Department should allow the Company to recover this shortfall using an exogenous adjustment, as provided in the Alt. Reg. Plan. Verizon proposes to raise the monthly dial tone rate by \$.34 for some, but not all, residential dial tone customers beginning October 6, 2004.² According to the Filing, 1,067,900 of 2,249,140 residential access line customers would see their dial tone rates increase from the current \$12.36 to a new \$12.70.³ The remaining

² The price-regulated services on which Verizon proposed to assess the rate increase are the dial tone line, Metropolitan Service, Suburban Calling Service, Circle Calling Service, Eastern LATA Unlimited Calling Plan, Call Around 413 Plus, and Baystate East (Met & Non-Met). Filing, Attachment II, work paper 1, Note A.

³ Filing, Attachment II, Workpaper 1, Line 1 (embedded formula); Lines 3 and 5.

1,181,240 customers would not receive the rate increase.

Discussion

Verizon's proposal to recover its anticipated PAL revenue losses using an exogenous adjustment is the Company's first request to the Department to determine whether to allow an exogenous adjustment under the Alt. Reg. Plan. For this reason, the Department should carefully examine the Filing to determine whether Verizon has met the Department's standard of review for exogenous adjustments. *See, e.g., Bell Atlantic-Massachusetts' Fourth Annual Price Cap Compliance Filing*, D.T.E. 98-67, Order at 7-9 (October 22, 1999), *NYNEX*, D.P.U. 94-50, Order at 145-146 (May 12, 1995). The Department's ruling on this issue could set precedent for future Verizon exogenous adjustment requests and may affect other regulated industries' exogenous adjustment requests to the Department.⁴

The Company's adjustment would be a permanent, not a temporary, increase in the dial tone rate for more than 1 million Massachusetts residential customers. Verizon did not apply the rate increase to all residential dial tone lines as it did in April 2003 as part of the Department's rate rebalancing docket, DTE 01-31 Phase II.⁵ Verizon has excluded over half of the residential dial tone lines from this new rate increase without adequate explanation. If Verizon had not excluded half of the residential customers, its monthly rate increase (assuming for the moment that Verizon's calculations are correct) would be \$.16, not \$.34, per residential access line.⁶ Verizon does not explain in its Filing adequately why the Company chose to discriminate against these customers by raising their residential rates.

Verizon has provided some supporting data in its Filing regarding the fee calculation, but the Filing does not provide sufficient explanation of the break-out and description of residential customers who will not be subjected to the rate increase. Moreover, Verizon relies on stale data to support its Filing.⁷ Without a detailed examination and updated information, the Department cannot ascertain whether Verizon's calculations are correct, or whether the Company has appropriately excluded one-half of its customers from the rate increase.

⁴ *See, e.g., Massachusetts Electric Company's Petition for Exogenous Costs*, D.T.E. 03-124 (MECo petition for exogenous costs, including a \$2 million positive exogenous adjustment reflecting changes due to revisions in Internal Revenue Code Section 168(k) that allow companies placing all property in service after September 11, 2001 through September 10, 2004, to qualify for an additional first-year depreciation for tax purposes), Testimony of Mr. LaFlamme, March 31, 2004, pp. 37-38.

⁵ *Verizon's Alternative Regulation Plan*, D.T.E. 01-31 (Phase II) Order at 79-80 (April 11, 2003).

⁶ The calculation is $(\$4,357,781 \div 2,249,140) \div 12 \text{ months} = \$.16/\text{month}$.

⁷ *See, e.g., Filing*, Attachment II, Work Paper 3, lines 21 and 30 (% inter-office, based on 9/7/2001 testimony of D. Miller).

The Department should investigate this Filing further to determine: (1) whether Verizon has met its burden of proof that an exogenous adjustment has affected the Company's annual costs or revenues by at least \$3 million; and (2) whether allowing Verizon to assess a rate increase on half of the residential dial tone lines, rather than on all residential dial tone lines, creates unjust, unreasonable, or improper rates that are prohibited by M.G.L. c. 159 §§ 16 and 17 or rates that are unjust, unreasonable, unjustly discriminatory, unduly preferential, not in the public interest, or otherwise in violation of M.G. L. c. 159 § 14.

In order to obtain a sufficient record for its decision, the Department should allow the Attorney General to issue discovery, conduct cross-examination and submit briefs on the Filing to determine: (1) why the Company excluded over a million residential access lines from the rate increase; (2) the categories and number of access lines excluded from the rate increase; (3) the Company's calculations of forecasted PAL revenue losses; (4) whether there are offsetting negative exogenous costs adjustments that could the reduce dial tone rate, such as those resulting from bonus depreciation exogenous adjustments under the Internal Revenue Code;⁸ and (5) other related issues.

Finally, the Department does not need to issue an order on the exogenous adjustment recovery issue by the October 6, 2004 compliance implementation date. Bifurcating the exogenous adjustment investigation into a separate track or phase will allow the Department to develop a complete record on the question of whether Verizon has met its burden of proof. The Department's prior investigation into raising the residential dial tone rate, D.T.E. 01-31 Phase II, took over eight months to complete from public hearings to final order.⁹ The Department should proceed deliberately and carefully, with time to reflect on the evidence presented, before approving any increases to residential consumers' basic telephone rates. Rather than trying to determine and implement a new rate increase in two months' time, the Department should adopt a cautious approach to ensure a well-reasoned decision by allowing parties ample time to explore the Company's request for an exogenous adjustment.

Conclusion

The Department should investigate Verizon's PAL revenue recovery calculations and Verizon's first post-Alt. Reg. Plan use of the exogenous adjustment mechanism to recover anticipated lost revenues from some, but not all, residential customers. Furthermore, the

⁸ *Massachusetts Electric Company's Petition for Exogenous Costs*, D.T.E. 03-124.

⁹ *Verizon's Alternative Regulation Plan*, D.T.E. 01-31 Phase II, Order at 3 (April 11, 2003).

Department should allow the Attorney General ample time to conduct discovery, cross-examine Company witnesses, and brief the issues that arise from that investigation.

Sincerely,

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KJR/kr

cc: Kevin Penders, Hearing Officer
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D.T.E. 97-88/97-18 (Phase II) Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommunications and Energy on its)	
own motion regarding (1) implementation of Section 276 of the)	
Telecommunications Act of 1996 relative to Public Interest Payphones,)	D.T.E. 97-88/
(2) Entry and Exit Barriers for the Payphone Marketplace, (3) New)	97/18
England Telephone and Telegraph Company d/b/a NYNEX's Public)	
Access Smart-Pay Line Service, and (4) the rate policy for operator)	
service providers.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated in the aforementioned service list by e-mail and either hand-delivery or mail.

Dated at Boston this 9th day of August 2004.

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